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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,803	07/22/2003	Arnold Keller	246472005200	5304

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EXAMINER

RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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08/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/623,803

Applicant(s)

KELLER, ARNOLD

Examiner

Anu Ramana

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

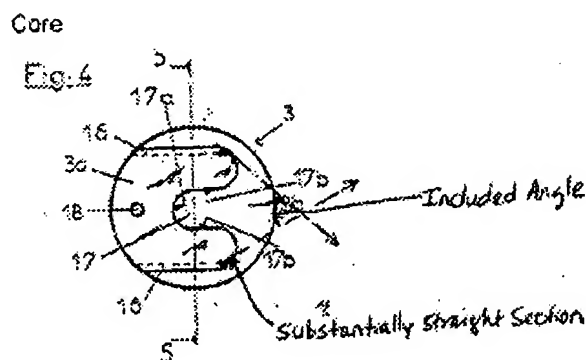
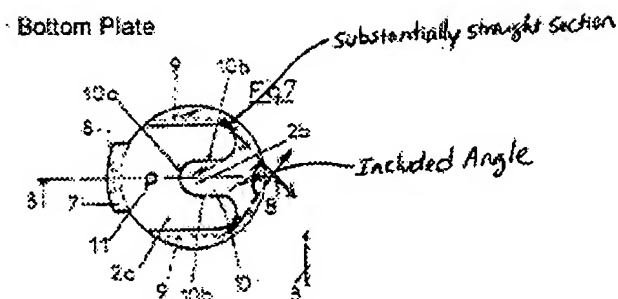
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Caenen et al. (FR 2,718,635).

Caenen et al. disclose an intervertebral disc prosthesis including: two cover plates (1, 2) and a prosthesis core 3 connected to cover plate 2 by connection profiles undercut in a complementary manner wherein the connection profiles include at least a pair of substantially straight profile sections, i.e., profile sections that are largely but not wholly straight, disposed symmetrically with respect to an anterior-posterior direction of the prosthesis (Figs. 4, 5, 7 and 8 and pages 5-9 of the attached translation).

It is noted that lines could be extended from substantially straight sections where the undercut portions 9 curve inward such that the lines meet at an included angle not greater than 150 degrees. Similarly, lines could be extended from substantially straight sections of undercut portions 16 such that the lines meet at an included angle not greater than 150 degrees.

See marked up Figures from Caenen et al. on the following page, to clarify Examiner's interpretation of Caenen et al.



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

In the alternate, claims 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caenen et al. (FR 2,718,635) over Heldreth et al. (EP 0636352 A2).

Caenen et al. disclose a hub or core 3 positioned on a lower plate by means of a system preventing rotation around the axis of the prosthesis.

Caenen et al. disclose all elements of the claimed invention except for undercut portions that are inclined relative to one another.

Heldreth et al. teach a tongue and groove attachment between two components of a prosthesis that is continuous with a lead-in angle between 1 and 179 degrees to

resist sliding and separation between the components (Figs. 1, 5, 8 and 9, col. 1, lines 25-47, col. 2, lines 43-58 and col. 3).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a lead-in angle to the undercut portions of the Caenen et al. components, as taught by Heldreth et al., to prevent sliding and separation of the core and the bottom plate.

Response to Arguments

Applicant's arguments with respect to claims 1, 3 and 4 have been considered but are not persuasive for the following reason.

Regarding the rejections of claims 1, 3 and 4 as being anticipated by Caenen et al., as admitted by the Applicant on page 3 of "REMARKS," "a substantially straight section" means a section that is largely or mostly straight but does not have to be completely straight. Caenen et al. clearly disclose "substantially straight sections" or "slightly curved arcs" that are mostly straight but not completely straight as illustrated in marked up Figures 4 and 5 in this action.

Regarding the rejections of claims 1, 3 and 4 under 35 USC 103(a) as being unpatentable over Caenen et al. in view of Heldreth et al., it is noted that in making this rejection, the Examiner is merely presenting all issues pertinent to patentability of claims 1, 3 and 4 by covering all applicable statutes and reasonable, alternate interpretation of claim language.

Caenen et al. do not disclose undercut portions inclined relative to one another. Heldreth teach a tongue and groove attachment between two components with a lead-in angle between 1 and 179 degrees to resist sliding and separation between the components. Using the known technique of providing a lead-in-angle angle between undercut portions to prevent separation between the components of the Caenen et al. prosthesis would have been obvious to one of ordinary skill.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR
August 22, 2007


ANURADHA RAMANA
PRIMARY EXAMINER
TECHNOLOGY CENTER 3700